



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2022-0004]

Equivalent Protective Arrangements for Railroad Employees

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed guidance.

SUMMARY: FRA proposes guidance for its grantees on protective arrangements that are required to protect employees impacted by certain projects financed by the Federal Government. FRA intends its final guidance (FRA Guidance) on this topic to inform its grantees on how to comply with statutory requirements for these protections in the performance of their grants.

DATES: Written comments on this proposed guidance must be received on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: You may submit comments, identified by the docket number FRA-2022-0004 by using the Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this guidance. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading in the SUPPLEMENTARY INFORMATION section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read the proposed FRA Guidance, background documents, or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Kevin MacWhorter, Attorney Advisor, Office of the Chief Counsel, telephone: (202) 641-8727, email: kevin.macwhorter@dot.gov.

SUPPLEMENTARY INFORMATION: In 1976, pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), representatives of the railroads and their employees agreed on “[f]air and equitable arrangements” to protect employees impacted by certain projects financed by the Federal Government. The Secretary of Labor adopted these protections in a letter to the Secretary of Transportation dated July 6, 1976. FRA has placed a copy of this letter and the accompanying protections in the docket for this guidance. In general, these protections provided that a railroad employee who is adversely affected by a project receiving certain financing from the Federal Government was entitled to receive a displacement allowance, and/or a dismissal allowance, among other benefits.

Many of FRA’s current discretionary grant programs, including the Consolidated Rail Infrastructure and Safety Improvements Program and the Federal-State Partnership for State of Good Repair Program, are subject to the grant conditions described in section 22905(c) of title 49, U.S.C. As relevant here, section 22905(c)(2)(B), requires grant applicants, for any grant for a project that uses rights-of-way owned by a railroad, to agree to comply with “the protective arrangements that are equivalent to the protective arrangements established under” the 4R Act. While this requirement is a condition of many FRA grants, it is not often applicable (as FRA’s grants do not typically cause an adverse impact to railroad employees). With that said, FRA developed the FRA Guidance to assist grantees and to facilitate compliance with these important protections. Once final, FRA intends to include the FRA Guidance as an appendix to all new grant

and cooperative agreements subject to section 22905(c)(2)(B), and grantees will be required to ensure the inclusion of the FRA Guidance, as applicable, in all contracts for the FRA-funded project. Costs incurred to comply with the FRA Guidance and in a manner consistent with 2 CFR part 200 are eligible for reimbursement under the applicable grant.

Section 22905(c)(2)(B) specifically requires protective arrangements “equivalent” to those established under the 4R Act. As such, in the FRA Guidance, FRA did not deviate from the protections adopted by the Secretary of Labor in 1976. The FRA Guidance only seeks to clarify the protections and to ensure grant applicants understand them. FRA did not create new, or remove existing, protections. As noted, FRA has included a copy of the Secretary of Labor’s letter and the accompanying protections in the docket to facilitate review of the FRA Guidance.

The FRA Guidance describes both procedural and substantive protections. The substantive protections include dismissal and displacement allowances and moving assistance, among other items included in the original 4R Act protections. The procedural protections include opportunities for employees (or their representatives) to engage in negotiations with respect to application of the protections.

Privacy Act

FRA may solicit comments from the public to better inform its guidance process. FRA posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be

fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

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